

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ANTHONY WAYNE JOHNSON, JR.,
11 Plaintiff,
12 v.
13 M. GAINS *et al.*,
14 Defendants.

Civil No. 09cv1312-LAB (POR)

**REPORT AND RECOMMENDATION
ORDER THAT PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT BE
DENIED**

[ECF No. 69]

15
16 On April 8, 2011, Plaintiff Anthony Wayne Johnson, Jr. filed a Motion for Summary
17 Judgment. (ECF No. 66.) In that motion, Plaintiff argued he is entitled to judgment as a matter of
18 law on his excessive force claim against Defendants Carpio, Garza, Rascon, Palomera, and Smith
19 because "[t]he facts are undisputed that Defendants M. Carpio and B. Smith violated Plaintiff's
20 rights protected by the Eighth Amendment to the U.S. Constitution." (*Id.*) Shortly thereafter,
21 Plaintiff filed a Motion for Appointing of Counsel/Motion for Summary Judgment, in which he
22 moved for summary judgment on the same grounds. (ECF No. 69.) The Court denied Plaintiff's
23 Motion for Summary Judgment without prejudice on May 24, 2011. (ECF No. 76.)

24 On July 15, 2011, the Court issued a Report and Recommendation that Plaintiff's Motion for
25 Summary Judgment be denied. (ECF No. 84.) Plaintiff filed an Objection to the Court's Report and
26 Recommendation on August 8, 2011. (ECF No. 93.) Defendants did not file a reply to Plaintiff's
27 Objection. The Court's Report and Recommendation Order (ECF No. 84) is currently pending
28 before the Honorable Larry A. Burns. Based thereon and for the reasons set forth in its July 15,

1 2011 Report and Recommendation Order, the Court further RECOMMENDS that Plaintiff's
2 successive Motion for Summary Judgment be DENIED.

3 This report and recommendation will be submitted to the United States District Court Judge
4 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Any party may file
5 written objections with the Court and serve a copy on all parties on or before **March 2, 2012**. The
6 document should be captioned "Objections to Report and Recommendation." Any reply to the
7 objections shall be served and filed **no later than 14 days** after being served with the objections.
8 The parties are further advised that failure to file objections within the specified time may waive the
9 right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 IT IS SO ORDERED.

11 DATED: February 16, 2012

12
13 
14 LOUISA S PORTER
United States Magistrate Judge

15 cc The Honorable Larry A. Burns
16 All parties
17
18
19
20
21
22
23
24
25
26
27
28